IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 158 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
HAGOCHI CHEMICALS PVT. LTD. - Opponent(s)

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Appearance :
MR. TANVISH U. BHATT for Applicant(s).
NONE for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Tribunal, at the instance of the Revenue,

has referred the following question for our opinion:

> “Whether on the facts and in the circumstances of the case, the Tribunal is right in law in directing the Assessing Officer to include the value of property at village Uchhad amounting to Rs.7,88,078/- for the purpose of computing the capital gain as provided u/s. 50 of the Act, when the construction of the said property was not completed and was not put to use for the business purpose?”

2. The Tribunal has observed that the assessee went for establishing a factory and for that purpose, after spending a good fortune, it raised the premises, but, before it could be put to business use, certain disputes arose between the directors and in view of the orders passed by the High Court and the dispute between the directors, the property could not be put to business use. It was also found that the property was leased out and some lease income was derived from the property. The Income Tax Officer held that the rental income was liable to be taxed. It was contended before the Appellate Forum by the representative of the assessee that if because of the compelling circumstances and reasons, the property could not be put to use for which it was established and

in the meanwhile, some rental income was derived from it, under the circumstances, the rental income could not be included in the taxable income. The assessee also relied upon a judgement of the Delhi High Court in the matter of ***Additional C.I.T. vs. Rajindra Flour and Allied Industries P. Ltd.*** [***128 ITR 402***] to contend that such an income was not the rental income. The Appellate Court, so also the Tribunal, has held that the lease rent compensation, which was received by the assessee from exploitation of the property, would be business income and not the rental income.

3. The Tribunal, after hearing the parties, held that the income from the said asset should be considered as the business income and not the income from house property.

4. As, on the facts, the Tribunal has found that the income derived from the said property because of the special reasons would be treated to be the business income, we do not find any reason to take a different view. The Tribunal even otherwise was justified in holding that the income derived from the said premises was business income. We answer the Reference against the interest of the Revenue and in favour of the assessee.

The Reference is accordingly disposed of. No costs.

[***R.S.Garg, J.***]

[***M. R. Shah, J.***]

*kamlesh**